

Decision 03-08-024 August 21, 2003

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Examine the  
Commission's Future Energy Efficiency Policies,  
Administration and Programs.

Rulemaking 01-08-028  
(Filed August 23, 2001)

**OPINION ON REQUEST FOR INTERVENOR COMPENSATION**

**1. Summary**

This decision grants intervenor compensation to The Utility Reform Network (TURN) in the amount of \$34,989.42 for its substantial contributions to Decision (D.) 01-11-066, D.02-03-056, D.02-05-046 and D.03-04-055.

**2. Background**

The Commission initiated this rulemaking in August 2001 to examine the policies, administration and program design applicable to future energy efficiency programs funded pursuant to Section 851 of the Public Utilities Code. The Commission stated its intent to revise policy rules, program design and evaluation; to solicit proposals and select programs for program year (PY) 2002; and to reconsider program administration. Since issuing Rulemaking (R.) 01-08-028, the Commission has issued several orders modifying policies and program elements, and selecting among competing energy efficiency program proposals.

TURN filed a notice of intent to claim compensation in this proceeding on October 10, 2001. By ruling dated November 1, 2001, the ALJ found TURN eligible for compensation. TURN filed this request for compensation on June 17, 2003. No party filed a protest to TURN's request.

### **3. TURN's Substantial Contributions**

#### **1. Standard of Review and Summary of TURN's Participation**

Section 1802(h) of the PU Code defines "substantial contribution" as follows:

'Substantial contribution' means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

TURN's participation included filing of the following pleadings:

- "Comments on Draft Decision of ALJ Thomas," filed November 5, 2001;
- "Comments on Local Program Proposals," filed February 14, 2002;
- "Comments on Interim Opinion Selecting 2002 Statewide Energy Efficiency Programs," filed March 11, 2002;
- "Reply Comments on Local Program Proposals," filed March 15, 2002;
- "Comments on the CCPCFA Proposal for Using Utilities as Billing and Payment Agents," filed April 4, 2002;

- “Comments on Interim Opinion Selecting 2002-03 Local Energy Efficiency Programs,” filed April 22, 2002;
- “Reply Comments on Interim Opinion Selecting 2002-03 Local Energy Efficiency Programs,” filed April 26, 2002; and
- “Reply comments on Interim Opinion on 2003 Utility Energy Efficiency Programs,” filed April 1, 2003.

As part of its efforts, TURN engaged consultants to evaluate local and statewide programs. TURN believes that its comments and analysis informed the Commission’s decisions in this proceeding and that its contributions qualify for an award of intervenor compensation.

We concur with TURN’s view that it substantially contributed to several decisions in this proceeding as follows:

**Decision 01-11-066, November 29, 2001**

Decision 01-11-066 adopted new energy efficiency policy rules and set forth the criteria parties should use in applying for energy efficiency funding for program years 2002 and 2003. In that order, the Commission broke with tradition by setting aside 20% of the overall 2002 and 2003 budgets for non-utility or third party providers. It also set forth new policy rules with guidelines for program selection and a modified selection process for local programs. The decision adopted several policies and practices supported by TURN.

**Decision 02-03-056**

In D.02-03-056, the Commission selected utility statewide programs for funding of \$160 million in PY 2002, eliminated shareholder incentives for program administration and made several other less significant program changes. The Commission adopted several of TURN’s policy positions, including its proposal to eliminate shareholder incentives. The Commission also

agreed with TURN that holding back 15% of contractor funding was important to ensure accountability.

**Decision 02-05-046**

In D.02-05-046 the Commission selected local programs for funding of approximately \$100 million in 2002-03. TURN evaluated approximately 150 of the 300 proposals submitted to the Commission. Rather than duplicating the Commission's selection process, TURN developed key principles to use in evaluating proposals and then ranked the proposals and commented on each. This analysis assisted the Commission in its selection process. The Commission also changed the proposed order in ways that were consistent with TURN's recommendations.

**Decision 03-04-055**

In D.03-04-055, the Commission selected utility statewide and local programs for 2003, and adopted a new process for hiring consultants to perform market assessment and evaluation studies (MA&E). TURN's reply comments on the proposed decision addressed the issue of contracting for MA&E activities and the final decision was consistent with TURN's recommendation for the Commission to oversee program evaluation.

**4. Itemization of Services and Expenditures**

TURN requests compensation of \$34,989.42, including \$13,521.25 for attorney time, \$21,100.25 for consulting services and \$367.92 for other direct expenses. Attorney time related to compensation was discounted by 50%. TURN submitted detailed logs showing the time expended by TURN's attorneys and the direct expenses that were incurred.

Table 1 – Summary of Direct Expenses

<b>EXPENSE CATEGORY</b>		<b>AMOUNT</b>
Xeroxing		\$326.40
Postage		\$0.00
Phone & Fax		\$41.52
Consulting Expenses		
	JBS Energy (Professional)	\$9,401.25
	JBS Energy (Direct Expenses)	\$84.00
	Cynthia Mitchell	\$11,615.00
<b>TOTAL</b>		<b>\$21,468.17</b>

Table 2 – Professional Attorney Time

ATTORNEY			Substantive Issue		Compensation		Total Hours		Percent	Total
	Billing	Hourly	Hours	Hours	Hours	Hours			Claimed	Compensation
	Period	Rate	Expended	Claimed	Expended	Claimed	Expended	Claimed		
Marcel Hawiger	2003	\$200.00	7.50	7.50	13.00	6.50	20.50	14.00	68.29%	\$2,800.00
	2002	\$200.00	45.65	45.65	0.00	0.00	45.65	45.65	100.00%	\$9,130.00
	2001	\$190.00	8.00	8.00	0.75	0.38	8.75	8.38	95.71%	\$1,591.25
TOTAL							74.90	68.03	90.82%	\$13,521.25

While the Commission did not adopt all of TURN's recommendation in this proceeding, TURN believes that the partial adoption of TURN's contentions and recommendations justifies an award of compensation for the entire requested amount. We agree that TURN's participation was valuable and that overall its billings for this work are reasonable.

### **1. Hours of Work**

TURN requests compensation for approximately 75 hours of attorney time and approximately 182 hours of professional consulting time. This request is reasonable considering the number of issues addressed so far in the proceeding.

### **2. Hourly Rates for TURN Attorneys**

TURN requests an hourly rates for its attorneys of \$190 for work completed in 2001, a rate adopted for Mr. Hawiger in D.01-10-008. TURN requests an hourly rate of \$200 for Mr. Hawiger for 2002, which the Commission adopted in D.02-09-040. TURN proposes the Commission use the adopted 2002 rate for the work of Mr. Hawiger in 2003. We adopt these rates for Mr. Hawiger as TURN requests.

### **3. Hourly Rates for Consultants**

TURN seeks reimbursement for consulting costs at the rates billed to TURN. The Commission has already adopted these hourly rates for Ms. Mitchell and Mr. Nahigian. The Commission adopted an hourly rate of \$115 for Ms. Mitchell in D.01-12-008. It adopted an hourly rate of \$115 for Mr. Nahigian for 2002 in D.02-11-017. We apply those rates here.

As with all intervenors seeking compensation, TURN is reminded that it is subject to audit or review by the Commission staff. Therefore, it must maintain and retain adequate accounting records and other necessary

documentation in support of all claims for intervenor compensation. These records should identify issues for which TURN requests compensation, the actual time spent by each person, the applicable hourly rate, fees paid, and any other costs for which compensation has been claimed.

#### **5. Waiver of Comment Period**

Since this decision addresses a request for compensation, the public review and comment on the draft decision is waived pursuant to Section 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules of Practice and Procedures (Rules).

#### **6. Assignment of Proceeding**

Susan P. Kennedy is the Assigned Commissioner and Kim Malcolm is the assigned Administrative Law Judge in this proceeding.

#### **Findings of Fact**

1. TURN was found eligible for an award of compensation in an ALJ ruling dated November 1, 2001.
2. TURN filed a timely request for an award of compensation.
3. TURN made a substantial contribution to D.01-11-066, D.02-03-056, D.02-05-046, and D.03-04-055.
4. The costs of TURN's participation in this proceeding are reasonable in relation to the benefit ratepayers realized through TURN's participation.
5. The Commission has already approved the hourly rates for TURN's attorneys and consultants for the period during which they billed in this proceeding.
6. The direct expenses, the number of hours billed, and the hourly rates charged are reasonable.



### **Conclusions of Law**

1. All of TURN's work claimed in this proceeding should be fully compensated.
2. The Commission should award TURN \$34,989.42 for its contributions to D.01-11-066, D.02-03-056, D.02-05-046, and D.03-04-055.
3. Pursuant to Section 311(g)(3) and Rule 77.7(f)(6) of the Commission's Rules, the 30-day public review and comment period for today's decision should be waived.
4. This order should be effective today so that TURN may be compensated without undue delay.

### **O R D E R**

#### **IT IS ORDERED** that:

1. The Utility Reform Network (TURN) is awarded \$34,989.42 for its contributions to Decision (D.) 01-11-066, D.02-03-056, D.02-05-046 and D.03-04-055.
2. PG&E, SCE and Sempra shall, within 30 days of this order, pay to TURN the amount of \$34,989.42, plus interest on the award at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15, beginning September 15, 2003 and continuing until full payment is made. PG&E, SCE and Sempra shall determine their respective liabilities for the total amount by applying the percentage share of their 2002 electrical revenues to the compensation award.

3. The public review and comment period for today's decision is waived.

This order is effective today.

Dated August 21, 2003, at San Francisco, California.

MICHAEL R. PEEVEY

President

CARL W. WOOD

LORETTA M. LYNCH

GEOFFREY F. BROWN

SUSAN P. KENNEDY

Commissioners

**Compensation Decision Summary Information**

<b>Compensation Decision(s):</b>	D0308024
<b>Contribution Decision(s):</b>	D0106086 and D0211028
<b>Proceeding(s):</b>	A0104007
<b>Author:</b>	ALJ Wong
<b>Payer(s):</b>	The Utility Reform Network

**Intervenor Information**

<b>Intervenor</b>	<b>Claim Date</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>	<b>Reason Disallowance</b>
The Utility Reform Network	1/13/03	\$16,579.04	\$16,579.04	

**Witness Information**

<b>First Name</b>	<b>Last Name</b>	<b>Type</b>	<b>Intervenor</b>	<b>Hourly Fee Requested</b>	<b>Year Hourly Fee Requested</b>	<b>Hourly Fee Adopted</b>
Marcel	Hawiger	Attorney	The Utility Reform Network	\$190	2001-2002	\$190
Michel	Florio	Attorney	The Utility Reform Network	\$385	2001-2002	\$385